

December 30, 2003

Mr. Larriante J. Sumbry
DOC No. 965137, C-433
Indiana State Prison
P.O. Box 41
Michigan City, Indiana 46361-0041

Re: Formal Complaint 03-FC-141
Alleged Denial of Access to Public Records by the Office of the Governor

Dear Mr. Sumbry:

This is in response to your formal complaint alleging that the Office of the Governor violated the Access to Public Records Act (APRA) (Ind. Code 5-14-3-1 *et seq.*), by failing to timely respond to your request for records within the time period allotted by statute. The Office of the Governor has responded to your complaint, and a copy of that response is enclosed for your reference. I find that the Office of the Governor did not violate the APRA as alleged in your complaint.

BACKGROUND

On December 3, 2003, you signed a letter addressed to the Governor of the State of Indiana requesting access to records you assert are maintained by that entity. Your request seeks the following records and/or information:

- Governor Annual Report;
- Governor Professional Services Contracts;
- Duties and Responsibilities of the Governor;
- Types of Complaints Investigated by the Governor;
- Names of all Staff Members Employed by the Governor;
- Governor Handbook of Practice and Internal Procedures;
- Governor Code of Ethics;
- Governor Civil/Criminal Complaint Form; and
- Legislative Laws Applicable to the Governor.

On December 15, 2003, you signed a complaint subsequently filed with this office challenging the Office of the Governor's failure to respond to your request. This office

forwarded your complaint to the Office of the Governor for response on December 18, 2003. The Office of the Governor responds that it received your request on December 9, 2003, and that a note acknowledging receipt and stating the intent of the office toward production and/or other action on your request was being sent under separate cover. That response further indicated that the Office of the Governor anticipated production and/or other action on your request on or about the last week of December.

ANALYSIS

A public agency that receives a request for records under the APRA has a specified period of time to respond to the request. IC 5-14-3-9. A satisfactory response need not include production or expressly decline to produce the documents that are responsive to the request. Of course, a public agency is free to take either of those actions, but may also comply with its response obligation under the statute by acknowledging receipt of the request and indicating the specific actions the agency is taking toward production. When a public records request is made in writing and delivered to the public agency by mail or facsimile, the public agency is required to respond to that request within seven (7) days of *receipt* of the request. IC 5-14-3-9(b). If that period of time elapses without a response, the request is presumed denied. IC 5-14-3-9(b). Absent evidence to the contrary, and consistent with the practice in other contexts, this office calculates and assumes *receipt* within three (3) days of the date of mailing. Cf. Ind. Trial Rule 6(E); Ind. Appellate Rule 25(C).

I decline to find that the Office of the Governor violated the APRA under the facts as alleged in your complaint. The Office of the Governor acknowledges receipt of your records request on December 9, 2003. Accordingly, that entity had seven days from the date of receipt, or, until December 16, 2003, to prepare and submit a response. Your complaint alleging that the Office of the Governor violated the APRA by failing to timely respond is signed and dated on December 15, 2003, *within the time the Office of the Governor's response was due*. Accordingly, your complaint was premature, and the Office of the Governor cannot be said to be in violation of the APRA at that time and based on the allegations of that complaint. I note that the Office of the Governor has since responded to your request.¹

CONCLUSION

For the reasons set forth above, I find the complaints without merit.

Sincerely,

Michael A. Hurst
Public Access Counselor

cc: Mr. Jon Laramore

¹ While the Office of the Governor was not in violation of the APRA at the time you submitted your complaint, its response was ultimately submitted approximately one week after the time for a response had elapsed.